

<b>SOLICITATION, OFFER AND AWARD</b>				1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING		PAGE OF PAGES 1   33			
2. CONTRACT (Proc. Inst. Ident.) NO.			3. SOLICITATION NO. MCC-08-0115-RFP		4. TYPE OF SOLICITATION [ ] SEALED BID (IFB) [x] NEGOTIATED (RFP)		5. DATE ISSUED <b>07/28/08</b>		6. REQUISITION/PURCHASE NO.		
7. ISSUED BY <b>Millennium Challenge Corporation (MCC) Contracts &amp; Grants Management Division 875 Fifteenth Street NW Washington, DC 20005</b>					CODE		8. ADDRESS OFFER TO (If other than item 7)  See Section L.9				
NOTE: In sealed bid solicitation "offer" and "offeror" mean "bid" and "bidder".											
<b>SOLICITATION</b>											
9. Sealed offers in one original electronic copy and <u>see Section L.4.1</u> paper copy for furnishing the supplies or services in the Schedule will be received at the place specified in item 8, or if handcarried, in the depository located in <u>See Section L.8</u> until <u><b>2:00 p.m. eastern daylight time on 08/28/08.</b></u>											
(hour) (date)											
CAUTION – LATE Submissions, Modifications, and Withdrawals: See Section L. Provision No. 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.											
<b>**SPECIAL NOTE**</b>											
<b>THIS SOLICITATION IS RESERVED FOR FIRMS WITH OFFICES IN MOLDOVA AND OR THE EASTERN EUROPEAN REGION. ALL OFFERORS MUST BE MEMBERS OF THE BAR OF MOLDOVA AND LICENSED BY THE MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA IN ORDER TO BE CONSIDERED FOR AWARD.</b>											
10. FOR INFORMATION CALL:			A. NAME Katrina D. Jones			B. TELEPHONE (No collect calls) e-mails only			C. E-MAIL ADDRESS JonesKD@MCC.GOV		
<b>11. TABLE OF CONTENTS</b>											
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X	A	SOLICITATION/CONTRACT FORM			1	X	I	CONTRACT CLAUSES			17
X	B	SUPPLIES OR SERVICE AND PRICES/COSTS			2	PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACH.					
Including Pricing Tables found as attached Excel files											
X	C	DESCRIPTION/SPECS/WORK STATEMENT			5	X	J	LIST OF ATTACHMENTS including GSA Form 527			25
X	D	PACKAGING AND MARKETING			7	PART IV - REPRESENTATIONS AND INSTRUCTIONS					
X	E	INSPECTION AND ACCEPTANCE			8						
X	F	DELIVERIES OR PERFORMANCE			9	X	K	REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS			26
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X	H	SPECIAL CONTRACT REQUIREMENTS			12	X	M	EVALUATION FACTORS FOR AWARD			31
<b>OFFER (Must be fully completed by offeror)</b>											
NOTE: ITEM 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.											
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (18 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.											
13. DISCOUNT FOR PROMPT PAYMENT SEE 14 (See section I, Clause No 52.232-8)				10 CALENDAR DAYS %		20 CALENDAR DAYS %		30 CALENDAR DAYS %		CALENDAR DAYS %	
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the solicitation and related documents numbered and dated )				AMENDMENT NO.		DATE		AMENDMENT NO.		DATE	
15A. NAME AND ADDRESS OF OFFEROR		CODE		FACILITY		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)					
15B. TELEPHONE NO. (Include area code)				15C. CHECK IF REMITTANCE ADDRESS [ ] IS DIFFERENT FROM ABOVE-ENTER SUCH ADDRESS				17. SIGNATURE		18. OFFER DATE	
<b>AWARD (To be completed by Government)</b>											
19. ACCEPTED AS TO ITEM NUMBERED				20. AMOUNT		21. ACCOUNTING AND APPROPRIATION Funds will be cited and obligated on individual orders					
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: [ ] 10 U.S.C. 2304(c)( ) [ ] 41 U.S.C. 253(c)( )						23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)				ITEM	
24. ADMINISTRATION BY (If other than Item 7) CODE						25. PAYMENT WILL BE MADE BY CODE					
26. NAME OF CONTRACTING OFFICER (Type or print)  John Young						27. UNITED STATES OF AMERICA (Signature of Contracting Officer)				28. AWARD DATE	
IMPORTANT - Award will be made on this form, or on the Standard Form 26, or by other authorized official written notice.											

## SECTION B PRICING SCHEDULE

### B.1 Services to be Provided

The contractor shall provide legal services in support of Millennium Challenge Corporation's (MCC) program of assistance, as it relates to the country of Moldova.

### B.2 Schedule

See Section F for definition of base period and option periods. Offerors will present proposed billing rates applicable to each performance period. Billing rates will be inclusive of direct labor rates, overhead, G&A, and profit.

The labor categories listed below are illustrative; offerors may present labor categories that are consistent with their accounting system. Please ensure that all labor categories that could potentially be required for contract performance are addressed in your offer. If your firm has two or more levels in a particular labor category i.e. 1<sup>st</sup> year Associate, 2<sup>nd</sup> Year Associate etc. then state a rate for each and allocate the estimated hours among them.

A ceiling amount for Other Direct Costs to cover travel costs are estimated for evaluation purposes.

<b>Base Year</b>			<u>Est</u>		<u>Total Est.</u>
<u>CLIN</u>	<u>LABOR CATEGORY</u>	<u>U/I</u>	<u>Hrs.</u>	<u>Rate</u>	<u>Cost</u>
0001	Partner		200		
0001A	Partner	hr.	0	\$0.00	\$0.00
0001B	Partner	hr.			\$0.00
0001C	Partner	hr.			\$0.00
0001D	Associate		475		
0001E	Associate	hr.			\$0.00
0001F	Associate	hr.			\$0.00
0001G	Associate	hr.			\$0.00
0001H	Legal Assistant/Paralegal		50		\$0.00
0001I	Legal Assistant/Paralegal	hr.			\$0.00
0001J	Legal Assistant/Paralegal	hr.			\$0.00
<b>Total Estimated Base Annual Labor Hours</b>		<b>NTE</b>	<b>725</b>		
0002	<u>Other Direct Costs</u>	<b>NTE</b>			\$30,000.00
	Travel or miscellaneous items billed at cost i.e. telephone calls, faxes, translations				

**Base Year Total Not-to-Exceed Ceiling:**

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**Option Year 1 (month 13 – month 24)**

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CLIN	LABOR CATEGORY	U/I	Est Hrs.	Rate	Total Est. Cost
1001	Partner		200		
1001A	Partner	hr.	0	\$0.00	\$0.00
1001B	Partner	hr.			\$0.00
1001C	Partner	hr.			\$0.00
1001D	Associate		475		
1001E	Associate	hr.			\$0.00
1001F	Associate	hr.			\$0.00
1001G	Associate	hr.			\$0.00
1001H	Legal Assistant/Paralegal		50		\$0.00
1001I	Legal Assistant/Paralegal	hr.			\$0.00
1001J	Legal Assistant/Paralegal	hr.			\$0.00
Total Estimated Base Annual Labor Hours			NTE	725	
1002	Other Direct Costs	NTE			\$30,000.00
Travel or miscellaneous items billed at cost i.e. telephone calls, faxes, translations					
Option Year 1 Total Not-to-Exceed Ceiling:					

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**Option Year 2 (month 25 – month 36)**

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<u>CLIN</u>		<u>LABOR CATEGORY</u>	<u>U/I</u>	<u>Est Hrs.</u>	<u>Rate</u>	<u>Total Est. Cost</u>
2001	Partner			200		
2001A	Partner		hr.	0	\$0.00	\$0.00
2001B	Partner		hr.			\$0.00
2001C	Partner		hr.			\$0.00
2001D	Associate			475		
2001E	Associate		hr.			\$0.00
2001F	Associate		hr.			\$0.00
2001G	Associate		hr.			\$0.00
2001H	Legal Assistant/Paralegal			50		\$0.00
2001I	Legal Assistant/Paralegal		hr.			\$0.00
2001J	Legal Assistant/Paralegal		hr.			\$0.00
Total Estimated Base Annual Labor Hours			NTE	725		
2002	Other Direct Costs		NTE			\$30,000.00
Travel or miscellaneous items billed at cost i.e. telephone calls, faxes, translations						
Option Year 2 Total Not-to-Exceed Ceiling:						

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**Option Year 3 (month 37 – month 48)**

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<u>CLIN</u>	<u>LABOR CATEGORY</u>	<u>U/I</u>	<u>Est Hrs.</u>	<u>Rate</u>	<u>Total Est. Cost</u>
3001	Partner		200		
3001A	Partner	hr.	0	\$0.00	\$0.00
3001B	Partner	hr.			\$0.00
3001C	Partner	hr.			\$0.00
3001D	Associate		475		
3001E	Associate	hr.			\$0.00
3001F	Associate	hr.			\$0.00
3001G	Associate	hr.			\$0.00
3001H	Legal Assistant/Paralegal		50		\$0.00
3001I	Legal Assistant/Paralegal	hr.			\$0.00
3001J	Legal Assistant/Paralegal	hr.			\$0.00
<b>Total Estimated Base Annual Labor Hours</b>		<b>NTE</b>	<b>725</b>		

3002 Other Direct Costs **NTE** \$30,000.00

Travel or miscellaneous items billed at cost i.e.  
telephone calls, faxes, translations

**Option Year 3 Total Not-to-Exceed Ceiling:**

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**Option Year 4 (month 49 – month 60)**

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<u>CLIN</u>	<u>LABOR CATEGORY</u>	<u>U/I</u>	<u>Est Hrs.</u>	<u>Rate</u>	<u>Total Est. Cost</u>
40001	Partner		200		
4001A	Partner	hr.	0	\$0.00	\$0.00
4001B	Partner	hr.			\$0.00
4001C	Partner	hr.			\$0.00
4001D	Associate		475		
4001E	Associate	hr.			\$0.00
4001F	Associate	hr.			\$0.00
4001G	Associate	hr.			\$0.00
4001H	Legal Assistant/Paralegal		50		\$0.00
4001I	Legal Assistant/Paralegal	hr.			\$0.00
4001J	Legal Assistant/Paralegal	hr.			\$0.00
<b>Total Estimated Base Annual Labor Hours</b>		<b>NTE</b>	<b>725</b>		

4002 Other Direct Costs **NTE** \$30,000.00

Travel or miscellaneous items billed at cost i.e.  
telephone calls, faxes, translations

**Option Year 4 Total Not-to-Exceed Ceiling:**

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**Total Contract Value if ALL Options Exercised:**

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**SECTION C**  
**STATEMENT OF WORK STATEMENT**  
**Legal Support Services - Moldova**

**C.1. Introduction**

The Millennium Challenge Corporation (MCC) is a United States Government corporation created under Title VI of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (P.L. 108-199, Div. D; 22 U.S.C.A 7701). MCC requires legal consulting services to support its program of assistance.

**C.2. Background**

MCC is in the process of selecting local Moldovan counsel to represent MCC in connection with the negotiation, execution, ratification and implementation of a Compact with the Government of Moldova (GoM) and other supplemental agreements with GoM and other relevant parties.

**C.3 Scope of Work**

Selected contractors will provide legal advice and assistance to MCC in support of MCC's assistance programs with the GoM in accordance with MCC's authorizing legislation. As requested by MCC, selected contractors may work alone on particular tasks or may work as part of a team comprised of MCC staff and other contractors. Tasks may involve one or more of the following activities:

- a. Assessment and assistance in the negotiation of the proposed Compact and other supplemental agreements;
- b. Identifying and advising MCC on the resolution of legal issues related to the formation of business entities, funds and other legal entities in Moldova for implementation of the proposed Compact Program;
- c. Reviewing the Compact and other supplemental agreements in order to confirm that there are no issues of Moldovan law that arise there from;
- d. Performing legal due diligence, to the extent necessary, in the sectors that pertain to the proposed Compact Program: (e.g. road infrastructure, and agribusiness, as applicable);
- e. Providing legal opinion(s) to MCC on the validity and enforceability of agreements between and among MCC, GoM and other implementing entities organized in Moldova for the proposed Compact Program implementation;
- f. Assistance in the execution of the Compact;
- g. Assistance in ensuring that the Compact is approved and ratified in a proper and timely fashion; and
- h. Assistance with the implementation of the executed Compact and the other supplemental agreements, on an as-needed basis.

The work is expected to occur in four phases:

Phase 1. The proposed Compact will be thoroughly and comprehensively reviewed and assessed to determine the adequacy of its legal content and conformity with the laws, policies and regulations of Moldova. Counsel will prepare a report on the foregoing review, noting any nonconformity, conflict, or any other material matter, to the designated MCC Contracting Officer's Technical Representative ("**COTR**").

Phase 2. Counsel will assist with the preparation of a pre-Compact grant to facilitate the development of the proposed Compact, including review of the pre-Compact grant for compliance with Moldovan law.

Phase 3. Should a Compact agreement be reached with GoM, counsel shall maintain an active role in ensuring that the Compact is executed and ratified in a proper and timely fashion by GoM.

Phase 4. Counsel will assist with the implementation of the Compact and other supplemental agreements on an as-needed basis. Such activities may include: the formation of an accountable entity responsible for the supervision, management and implementation of the Compact; assistance in ensuring that the applicable conditions precedent to a disbursement have been satisfied; assistance in the procurement of goods and services necessary to implement the Compact; travel to a contract site to witness and verify that the contract is being performed as stipulated; review of contracts and subcontracts for compliance; and assistance in the legal design of projects implemented under the Compact.

**SECTION D**  
**PACKAGING AND MARKING**

**THERE ARE NO CLAUSES IN THIS SECTION**

## **SECTION E**

### **INSPECTION AND ACCEPTANCE**

#### **E. 1 INSPECTION AND ACCEPTANCE BY THE GOVERNMENT**

The Government, through its authorized representative, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed, or being performed, hereunder and shall notify the Contractor of unsatisfactory performance. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

It will be the responsibility of the COTR to ensure that adequate records of the inspection or evaluation are kept to support acceptance or rejection of work performed or being performed. Acceptance will be made by the COTR or designated representatives.



## **SECTION F DELIVERIES OR PERFORMANCE**

### **F.1 Place of Performance**

The Contractor shall perform services at its own facilities and may be required to travel to the MCC office for meetings or within the country of Moldova to perform services on location.

### **F.2 Deliverables**

Each task will specify the deliverables to be produced by the contractor and the schedule for completion. All deliverables shall be submitted in electronic form where feasible, and in hardcopy as necessary and/or required. Deliverables will be considered “draft” upon initial receipt. Drafts will be reviewed and accepted or concerns raised/comments provided within two weeks of receipt. The contractor shall appropriately address MCC’s concerns and provide final deliverables within one week of receiving the MCC response.

### **F.3 Period of Performance**

The period of performance shall be for one base period plus up to four option periods to be exercised at the discretion of the Government. The period of performance is:

BASE PERIOD:            From date of award through month 12

OPTION PERIOD ONE:       month 13 – month 24

OPTION PERIOD TWO:      month 25 – month 36

OPTION PERIOD THREE:    month 37 – month 48

OPTION PERIOD FOUR:     month 49 – month 60

### **F.4 Notice Regarding Late Delivery**

In the event the Contractor encounters difficulty in meeting performance requirements, or when he anticipates difficulty in complying with the contract delivery schedule or completion date, or whenever the Contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of the contract, the Contractor shall immediately notify the Contracting Officer and the COTR(s), in writing, giving pertinent details. Provision of such information only in character and that this provision shall not be construed as a waiver by the Government of any delivery schedule or date, or any rights or remedies provided by law or under this contract.

**SECTION G**  
**CONTRACT ADMINISTRATION DATA**

**G.1 MCC52.232-70 INVOICE INSTRUCTIONS (JAN 2006)**

Invoices shall be paid in accordance with the Prompt Payment Act, thirty days (30) following receipt of a proper invoice. The Contractor shall submit one copy of each invoice to the following address:

The Contractor shall submit each invoice electronically via email or fax to the following number:

**Fax:** 303.969.5151/7281 ATTN: MCC Payments, or

**Email:** [MCC\\_Accounting\\_NBCDENVER@nbc.gov](mailto:MCC_Accounting_NBCDENVER@nbc.gov).

As an alternative to electronic submission of invoices, one copy of each invoice may be submitted to the following address:

**National Business Center**  
M/S D-2773  
7301 West Mansfield Avenue  
Lakewood, CO 80235-2230

If it is determined that the amount billed is incorrect the invoice may be revised by the Government, or the Contractor may be required to submit a revised invoice.

To constitute a proper invoice, each invoice must include the following information and/or attached documentation:

- (1) Name, address and telephone of the Contractor
- (2) Date of invoice and invoice number
- (3) Contract number; also modification number, if applicable
- (4) Description of the supplies/services rendered (including hours incurred and billing rate, if applicable to the contract)
- (5) A schedule depicting the following information:

<b>Amount Invoiced</b>	<b>Cumulative</b>	<b>Authorized Value</b>	<b>Balance Remaining</b>
<b>This Period</b>	<b>Amount Invoiced</b>	<b>of Contract</b>	<b>on Contract</b>

- (6) Name of Contracting Officer's Technical Representative (COTR); and

- (7) Signature of authorized representative of the firm with the following invoice certification:

"The undersigned hereby certifies to the best of my knowledge and belief that: the sum claimed under this contract is proper and due, and all the costs of contract performance have been paid, or to the extent allowed under the applicable payment clause, will be paid by the Contractor when due in the ordinary course of business; the work reflected by these costs has been performed, and amounts involved are consistent with the requirements of this Contract.

BY:\_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Inquires regarding the status of invoices may be directed to NBC Accounting. The email address is:  
[MCC\\_Accounting\\_NBCDENVER@nbc.gov](mailto:MCC_Accounting_NBCDENVER@nbc.gov).

(End of clause)

**G.2 MCC52.204-70 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)  
(JAN 2006)**

(a) The Contracting Officer (CO) may designate a Government representative to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the COTR and the Contractor. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) Modifications to this contract are effective only if reduced to writing and executed by the CO. The contractor is specifically prohibited from performing any work that is outside the scope of this contract without the approval of the CO. The Contracting Officer cannot authorize the COTR or any other representative to sign documents (i.e., contracts, contract modifications, etc.) that require the signature of the Contracting Officer.

(End of clause)

## **SECTION H SPECIAL CONTRACT REQUIREMENTS**

### **H.1 ALTERNATE DISPUTE RESOLUTION**

Alternate Dispute Resolution (ADR) procedures increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. These procedures may be used at any time that the Contracting Officer has authority to resolve the issue in controversy. If the Contractor submits a claim, ADR procedures may be applied to all or part of the claim. The Contractor must certify its claim in accordance with FAR 33.207. When ADR procedures are used after the issuance of a Contracting Officer's final decision, the time limitations or procedural requirements for filing an appeal of the Contracting Officer's final decision are not altered.

### **H.2 52.217-9 Option to Extend the Term of the Contract (Mar 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within thirty (30) days before the contract expires; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 60 months.

### **H.4 MCC 52.243-70 INCREASE IN SERVICES (OCT 2006)**

The services described in Sections C (statement of work) represent the Government's best estimate for known requirements at this time. However, due to the uncertainty of the work, the Government reserves the right to add or delete services if the need arises.

(End of clause)

### **H.5 CONFIDENTIALITY**

The Contractor is subject to the following provision relating to the protection and nondisclosure of proprietary and other confidential business information:

(A) Confidential information, as used in this clause means (1) information or data of a personal nature, proprietary about an individual or (2) information or data submitted by or pertaining to an institution or organization, provided that such information in (1) and (2) does not include information which is, or which becomes, public or information which becomes known to the Contractor on a non-confidential basis from a third party source.

(B) If it is established that information to be utilized under this Contract is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 522a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(C) Confidential information, as defined in (a)(1) and (2) above, shall not be disclosed without the prior written consent of the MCC.

(D) Whenever the Contractor is uncertain regarding the proper handling of material under the Contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor shall obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication. Notwithstanding the above, information which is required to be disclosed by law or legal process shall not be included as confidential information.

#### **H.6 MCC52.237-74 WARRANTY AGAINST DUAL COMPENSATION (JAN 2006)**

The Contractor certifies that, except for the compensation set out in this contract, he is not receiving any additional wages, compensation or gifts from the MCC for any work contemplated or performed under or in connection with this contract.

(End of clause)

#### **H.7 MCC52.232-73 TRAVEL REIMBURSEMENT (MAY 2007)**

When authorized as part of the scope of work on this contract and within the contract ceiling and as approved by the Contracting Officer (CO) or Contracting Officer's Technical Representative (COTR), travel expenses incurred in performance of technical directives issued under this Contract may be reimbursed as allowed by the Federal Travel Regulations (FTR) in effect at the time of travel. Travel reimbursement, which is part of ODC, will be made up to the ODC not-to-exceed amount on the contract.

To be reimbursable, the travel expenses must be:

1. Allowable under the FTR and the provisions of this Contract and associated technical directives.
2. Approved prior to travel expenditure by the CO or COTR, and
3. Allocable and necessary for performance of this Contract and associated technical directives.

Travel reimbursement requests must be submitted in sufficient time for the CO or COTR to give prior approval, and must identify:

1. The name of the traveler,
2. Destination (s) including itinerary,
3. Purpose of the travel, and
4. Cost breakdown.

To be reimbursed, invoices including travel expenses must provide a detailed breakdown of the actual expenditures invoiced. Contractor shall maintain the original or legible copy of receipts for all travel expenses invoiced when the expenditure is \$75.00 or more. MCC reserves the right to request evidence of any travel expense paid.

(End of clause)

#### **H.8 MCC52.232-74 ODC REIMBURSEMENT (JAN 2007)**

Other Direct Charges (ODCs) will be reimbursed for direct costs as provided in the contract and/or task order. To be reimbursed, invoices including ODCs, must provide a detailed breakdown of the actual expenditures invoiced. The contractor shall maintain the original or legible copy of receipts for all ODCs invoiced. MCC reserves the right to request evidence of any ODC reimbursed. To assure timely reimbursement of ODC's, the contractor is strongly encouraged to submit charges within 45 days of the expense.

(End of clause)

## **H.9 MCC52.242-70 CONTRACTOR PERFORMANCE SYSTEM (CPS) REGISTRATION (FEB 2006)**

The Millennium Challenge Corporation (MCC) is using the National Institutes of Health (NIH) Contractor Performance System (CPS) to evaluate contractor performance (see FAR, Subparts 42.1502 and 42.1503). Contractors doing business with MCC are required to register in the NIH CPS accessible via the Internet at: <https://cpscontractor.nih.gov>. Inquiries regarding the registration process should be addressed to the NIH CPS help desk. The email address is [cps-support-1@list.nih.gov](mailto:cps-support-1@list.nih.gov) and the telephone number is (301) 451-2771.

(End of clause)

## **H.10 MCC52.204-71 SECURITY REQUIREMENTS FOR CONTRACTOR PERSONNEL (MAR 2006)**

Contractor employees and/or subcontractor personnel, while on MCC premises, shall be subject to and abide by all safety and security regulations of the MCC and shall be required to meet the same personnel security background requirements as MCC employees as outlined in MCC policies and procedures.

### **A. Contractor Personnel Facility Access Requirements (including offsite MCCNet access)**

Contractor personnel hired to work under contracts awarded by Millennium Challenge Corporation (MCC) and require access to MCC Headquarters, MCCNet, Sensitive But Unclassified (SBU), Foreign Government Information (FGI) or other MCC-Sensitive information must be U.S. citizens or have permanent resident status. Contractor personnel will undergo screening (background investigation) for this access. The screening will determine the individual's suitability and fitness for work under MCC contracts. The background investigation will consist of a National Agency Checks with Law and Credit (NACLC) for public trust positions. Permanent Residents must have been in the country for a sufficient amount of time for the investigation results to be meaningful, usually five (5) but a minimum of two (2) years.

Contractor is required to have all effected personnel execute appropriate security forms (SF 85P, Fingerprint Charts, Releases) and submit to MCC's Security Office before access to the facility or MCCNet is approved. Contractor personnel may work under the contract while the background investigation is being conducted. MCC Security Office will provide the necessary forms to the contractor. (Also see "Contract Award" below.)

Contractor personnel for whom unfavorable or derogatory information has been developed during the background investigation process will be presented to the person by MCC's Security Office and offered an opportunity to refute, explain, clarify or mitigate the information in question. If an ineligibility determination is made by MCC's Security Office, the individual will be ineligible to further render services under the contract and access to the facility and/or MCCNet will be immediately terminated.

The ineligibility decision will be communicated by the MCC Security Office through the contracting officer and COTR to the contractor. The specific reasons for the ineligibility determination will be made available only to the effected individual directly by the MCC's Security Office.

MCC will honor a previous investigation meeting or exceeding the MCC required investigation standard (NACLC) that was completed within the previous two years. Contractor personnel may be required to submit updated security forms.

### **B. Contract Employees Not Requiring Facility, MCCNet, or Sensitive Information Access**

Contractor personnel hired to work under contracts awarded by Millennium Challenge Corporation (MCC) and do not require access to MCC Headquarters, are preferred to be U.S. citizens or have permanent resident status. Employment of any foreign national working within the United States must have been lawfully admitted into the United States in accordance with immigration laws with eligibility to work within the United States. Employment of foreign national by MCC outside of the United States is subject to applicable security and legal requirements established by the Chief of Mission, United States Department of State, and United States Department of Treasury.

The contractor must provide to MCC's Security Office the full name, date of birth, place of birth, social security number (except for foreign contractors not issued a number) and home address. MCC may use this

information to screen contractor personnel through various government databases to determine their suitability and fitness for work under MCC contracts. Additional forms and background information may be requested to verify their suitability. Contractor personnel may work under the contract while the background investigation is being conducted.

Contractor personnel on whom unfavorable, derogatory or questionable information has been developed will be given an opportunity to refute, explain, clarify or mitigate the information with MCC's Security Office. If an ineligibility determination is made by MCC's Security Office, the individual will be ineligible to further render services under the contract.

The ineligibility decision will be communicated by the MCC Security Office through the contracting officer and COTR to the contractor. The specific reasons for the ineligibility determination will be made available only to the effected individual directly by the MCC's Security Office.

#### C. Contractor Personnel Security Clearance Requirements

The number of contractors cleared for access to classified information will be kept to a minimum, based on operational needs requiring the individual to access classified information or systems. The level of access approved will relate directly to the level of classified information the individual has a need to access.

1. Personal Service Contractors and Independent Contractors. MCC is responsible for security clearance actions associated with individuals who are directly compensated by MCC. MCC will request investigations and grant as appropriate, security clearances for Personal Service Contractors and independent contractor (including purchase orders) with individuals where MCC makes payment directly to the individual. The level of investigation and clearance granted will be based on the duties performed as compared with the position of an MCC employee in a similar position.

Contractor is required to execute appropriate security forms (SF 86, Fingerprint Charts, Releases) and submit to MCC's Security Office before access to the facility or MCCNet is approved. Contractor may work under the contract while the background investigation is being conducted. MCC Security Office will provide the necessary forms to the contractor and process the background investigation and approve the clearance.

2. Secure Contract Classification. Classified contracts, grants, and cooperative agreements with organizations must comply with the National Industrial Security Program (NISP). Under the provisions of NISP, the Defense Security Service (DSS) will investigate and adjudicate security clearances required for contractor employees to have access to classified information. Organizations (contractors and recipients) and their employees not currently participating in the National Security Industrial Program (NISP) and wishing to conduct classified business with MCC must be sponsored by MCC, another agency, or by company that has been previously cleared. Once the secure contract is awarded, MCC Contracting Officer, in consultation with MCC's Security Office, will be responsible for completing the Department of Defense Contract Security Classification Specification, DD Form 254.

#### D. Exceptions to Investigations Requirements

Contractors are exempt from investigative requirements when working in temporary low risk positions that are intermittent and when not working on an MCC contract in excess of 180 days in either a single assignment or a series of assignments. Low risk positions involve duties and responsibilities of limited impact on an agency or program mission, with potential for limited impact on the efficiency of the service. Persons occupying these positions will not have unescorted access to the Department of State or its Embassies, Sensitive But Unclassified, Foreign Government Information, MCC-Sensitive information, or require logon access to MCC's computer information network.

#### E. Issuing MCC Access Badges

MCC Access Badges are issued by the Security Office to new employees, and personal service contractors and other contractors with permanent duty station assignment at MCC Headquarters. Requirements before being issued a badge include submission of required security forms for processing a security clearance or facility access, and mandatory attendance at an MCC security briefing. Security briefings are scheduled on the first business day of the pay period and alternate weeks as determined by MCC's Human Resources, and are generally held from 8:45 to 10:00 am. MCC Visitor Badges (escort not required) are temporarily assigned by the Security Office immediately after these requirements are met, pending processing of MCC Photo-Identification Badges.

Contractors with the appropriate level background investigation and who are United States citizens may be eligible for 24/7 access to MCC headquarters. Foreign national with the appropriate level background investigation and issuance of an MCC Access Badge, will only be provided unescorted access during regular business hours (Monday through Friday, 7:30 am to 6:30 pm, excluding holidays and other MCC closings). Contractor employees who have not submitted the required security forms and attended the MCC security briefing will not be issued MCC Access Badges and their access to MCC headquarters will require them to have an appointment and be escorted at all times while in MCC headquarters.

#### F. Work Performance

The contractor shall prescreen all personnel covered under this clause to ensure they initially possess the necessary security requirements. In addition, the contractor is responsible to periodically, however, at least annually, review personnel security requirements to assure the individual statuses have not changed. Unless otherwise provided herein, in no event will the need to obtain clearances (including access) from the MCC Security Office be considered an excusable delay under the contract. In addition, the need to replace personnel determined by the MCC Security Office to be ineligible will not be considered an excusable delay.

Failure to comply with the contractor personnel security requirements may result in termination of the contract for default.

#### G. Contract Award

Within two (2) business days after notice of award from the contracting officer, contractor shall provide a listing of all personnel (and subcontractor personnel) working under the contract (unless otherwise stated in the contract) including the information and documentation required herein. This requirement does not include clerical or administrative support staff (unless otherwise stated in the contract).

The listing shall include individual's full name, date of birth, place of birth, social security number (except for foreign contractors not issued a number) and home address. This listing shall state whether or not the individual will need a security clearance, MCC facility access, access to non-classified sensitive information, MCC Net access, or no access privileges. In addition, the contractor will provide a central point-of-contact regarding personnel security issues. The contracting officer will send a copy of the listing and point-of-contact to the MCC Security Office. It is the MCC Security Office's responsibility to furnish the necessary form and initiate appropriate security action with the contractor's point-of-contact. Once the forms have been provided to the contractor and/or employee, it is the contractor's responsibility to assure that all requested information is submitted within ten (10) business days.

**(End of clause)**



## SECTION I CONTRACT CLAUSES

### I.1 CONSENT TO SUBCONTRACTING

The Contractor shall not subcontract any work under this contract with a total value greater than \$15,000.00 without input from the COTR and prior to the Contracting Officer's written approval. The Contractor may be required to submit a "consent to subcontract" package in which MCC can review the pending subcontract, at CO discretion. This clause does not apply to contracts of employment between the Contractor and its personnel.

### I.2 MCC 52.242-70 CONTRACTOR PERFORMANCE SYSTEM (CPS) REGISTRATION (FEB 2006)

The Millennium Challenge Corporation (MCC) is using the National Institutes of Health (NIH) Contractor Performance System (CPS) to evaluate contractor performance (see FAR, Subparts 42.1502 and 42.1503). Contractors doing business with MCC are required to register in the NIH CPS accessible via the Internet at: <https://cpscontractor.nih.gov>. Inquiries regarding the registration process should be addressed to the NIH CPS help desk. The email address is [cps-support-1@list.nih.gov](mailto:cps-support-1@list.nih.gov) and the telephone number is (301) 451-2771.

### I.3 52.212-4 Contract Terms and Conditions—Commercial Items (Feb 2007)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*—

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable

charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. 3701](#), *et seq.*, Contract Work Hours and Safety Standards Act; [41 U.S.C. 51-58](#), Anti-Kickback Act of 1986; [41 U.S.C. 265](#) and [40 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. 423](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at [52.212-5](#).

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The [Standard Form 1449](#).

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) Central Contractor Registration (CCR).

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR [Subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of [Subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see [Subpart 32.8](#), Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

**(End of clause)**

*Alternate I (Feb 2007).* When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i) and (l) for those in the basic clause.

(a) *Inspection/Acceptance.* (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. *[Insert portion of labor rate attributable to profit.]*

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

- (A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
- (B) Terminate this contract for cause.
- (ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.
- (6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—
- (i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
- (ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.
- (8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
- (9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.
- (e) *Definitions.* (1) The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference. As used in this clause—
- (i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
- (ii) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—
- (A) Performed by the contractor;
- (B) Performed by the subcontractors; or
- (C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.
- (iii) *Materials* means—
- (A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;
- (B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
- (C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);
- (D) The following subcontracts for services which are specifically excluded from the hourly rate: *[Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.]*; and
- (E) Indirect costs specifically provided for in this clause.
- (iv) *Subcontract* means any contract, as defined in FAR [Subpart 2.1](#), entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
- (i) *Payments.* (1) *Services accepted.* Payment shall be made for services accepted by the Government that have been delivered to the delivery destination(s) set forth in this contract. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:
- (i) *Hourly rate.*
- (A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.
- (B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.
- (C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.
- (D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.
- (E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.
- (1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.
- (2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.
- (3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.
- (ii) *Materials.*



(A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR [2.101](#), the price to be paid for such materials shall be the contractor's established catalog or market price, adjusted to reflect the—

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs*. Unless listed below, other direct and indirect costs will not be reimbursed.

(1) *Other Direct Costs*. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: travel, translations, telephone calls including long distance telephone calls & fax.

(2) *Indirect Costs (Material Handling, Subcontract Administration, etc.)*. The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: \$0.00

(2) *Total cost*. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price*. The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records*. At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments*. (i) Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or

that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(ii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(6) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(7) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR part 1315.

(8) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(9) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(1) *Termination for the Government’s convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor’s records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

#### **I.4 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (June 2008)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(2) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

— (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

— (2) [52.219-3](#), Notice of Total HUBZone Set-Aside (Jan 1999) ([15 U.S.C. 657a](#)).

— (3) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

— (4) [Reserved]

— (5)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (June 2003) ([15 U.S.C. 644](#)).

— (ii) Alternate I (Oct 1995) of [52.219-6](#).

— (iii) Alternate II (Mar 2004) of [52.219-6](#).

— (6)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (June 2003) ([15 U.S.C. 644](#)).

— (ii) Alternate I (Oct 1995) of [52.219-7](#).

— (iii) Alternate II (Mar 2004) of [52.219-7](#).

— (7) [52.219-8](#), Utilization of Small Business Concerns (May 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

— (8)(i) [52.219-9](#), Small Business Subcontracting Plan (Apr 2008) ([15 U.S.C. 637\(d\)\(4\)](#)).

— (ii) Alternate I (Oct 2001) of [52.219-9](#).

- (iii) Alternate II (Oct 2001) of [52.219-9](#).
  - (9) [52.219-14](#), Limitations on Subcontracting (Dec 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).
  - (10) [52.219-16](#), Liquidated Damages—Subcontracting Plan (Jan 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
  - (11)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEPT 2005) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
  - (ii) Alternate I (June 2003) of [52.219-23](#).
  - (12) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Apr 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
  - (13) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
  - (14) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) ([15 U.S.C. 657 f](#)).
  - (15) [52.219-28](#), Post Award Small Business Program Rerepresentation (June 2007) ([15 U.S.C. 632\(a\)\(2\)](#)).
  - (16) [52.222-3](#), Convict Labor (June 2003) (E.O. 11755).
  - X (17) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (Feb 2008) (E.O. 13126).
  - (18) [52.222-21](#), Prohibition of Segregated Facilities (Feb 1999).
  - X (19) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).
  - (20) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).
  - (21) [52.222-36](#), Affirmative Action for Workers with Disabilities (Jun 1998) ([29 U.S.C. 793](#)).
  - (22) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).
  - (23) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
  - X (24)(i) [52.222-50](#), Combating Trafficking in Persons (Aug 2007) (Applies to all contracts).
  - (ii) Alternate I (Aug 2007) of [52.222-50](#).
  - (25)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)).
  - (ii) Alternate I (May 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)).
  - (26) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).
  - (27)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).
  - (ii) Alternate I (DEC 2007) of [52.223-16](#).
  - (28) [52.225-1](#), Buy American Act—Supplies (June 2003) ([41 U.S.C. 10a-10d](#)).
  - (29)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (Aug 2007) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169).
  - (ii) Alternate I (Jan 2004) of [52.225-3](#).
  - (iii) Alternate II (Jan 2004) of [52.225-3](#).
  - (30) [52.225-5](#), Trade Agreements (Nov 2007) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).
  - X (31) [52.225-13](#), Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
  - (32) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](#)).
  - (33) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) ([42 U.S.C. 5150](#)).
  - (34) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (Feb 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).
  - (35) [52.232-30](#), Installment Payments for Commercial Items (Oct 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).
  - X (36) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) ([31 U.S.C. 3332](#)).
  - (37) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) ([31 U.S.C. 3332](#)).
  - (38) [52.232-36](#), Payment by Third Party (May 1999) ([31 U.S.C. 3332](#)).
  - (39) [52.239-1](#), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](#)).
  - (40)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).
  - (ii) Alternate I (Apr 2003) of [52.247-64](#).
- (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
- (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).
  - (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (May 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).
  - (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Nov 2006) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).
  - (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

— (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

— (7) [52.237-11](#), Accepting and Dispensing of \$1 Coin (Aug 2007) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.219-8](#), Utilization of Small Business Concerns (May 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(ii) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(iii) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (June 1998) ([29 U.S.C. 793](#)).

(v) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vi) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(vii) [52.222-50](#), Combating Trafficking in Persons (Aug 2007) ([22 U.S.C. 7104\(g\)](#)). Flow down required in accordance with paragraph (f) of FAR clause [52.222-50](#).

(viii) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(ix) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(x) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

*Alternate I (Feb 2000)*. As prescribed in [12.301\(b\)\(4\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”



**SECTION J**  
**LIST OF ATTACHMENTS**

**ATTACHMENT  
NUMBER**

**TITLE**

**NONE**

**SECTION K**  
**REPRESENTATIONS, CERTIFICATIONS AND**  
**OTHER STATEMENTS OF OFFERORS**

**K.1      52.204-8 Annual Representations and Certifications (Jan 2006)**

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 541110.

(2) The small business size standard is \$6.5 million.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (c) of this provision applies.

(2) If the clause at 52.204-7 is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (c) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

☐ (i) Paragraph (c) applies.

☐ (ii) Paragraph (c) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause #	Title	Date	Change
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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

**(End of provision)**

**SECTION L**  
**INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS**

**L.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The Offeror is cautioned that the listed provisions may include blocks that must be completed by the Offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the Offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this address:

<http://www.acqnet.gov/far/>

CLAUSE	TITLE	DATE
52.204-6	Data Universal Numbering System (DUNS) Number	APR 2008
52.204-7	Central Contractor Registration	APR 2008
52.214-34	Submission of Offers in English Language	APR 1991
52.214-35	Submission of Offers in US Currency	APR 1991
52.215-1	Instructions to Offerors – Alternate II	JAN 2004
52.232-13	Notice of Progress Payments	APR 1984

**L.2 FAR CLAUSES INCORPORATED IN FULL TEXT**

**L.2.1 52.233-2 SERVICE OF PROTEST (SEP 2006)**

Protests, as defined in Section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

G. Quent Williams, Contracting Officer  
Millennium Challenge Corporation  
875 Fifteenth Street NW  
Washington, DC 20005

The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

**L.3 TYPE OF AGREEMENT**

The Government contemplates award of Time and Material (T&M) type contract.

**L.4 PROPOSAL FORMAT AND SUBMISSION INSTRUCTIONS**

**L.4.1 General**

Offerors shall submit proposals with adequate information to evaluate their technical capability to perform legal support services identified in Section C, Work Statement.

Offerors must submit a cost proposal based on a Time and Materials (T&M) type of contract. The T&M contract type will present fixed hourly rates (in US currency) burdened with direct labor cost, overhead, G&A, and profit.

Offerors are cautioned that the quality of their proposal and adherence to solicitation response requirements and/or restrictions are considered reflective of the manner in which the Offeror could be expected to perform services and will be given due consideration throughout the evaluation process.

The proposal shall be in English and marked with solicitation number, title and Offeror's name.

Offerors shall ensure that the print is easily readable. Each page shall have not less than one-inch margins on each side of the page. Header/footer information (which does not include any information to be evaluated) may be included in the 1 inch margin space. Each 8 and 1/2 by 11 inch "sheet" shall count as one page. Foldouts for complete spreadsheets and/or organization charts are permissible up to 11" by 17" and shall count as two pages.

The proposal submissions shall be in electronic hardcopy and Adobe (PDF) format, submitted to the address in Block 7 of the SF 33 not later than the date and time specified in Block 9 of SF 33. Each proposal shall consist of two volumes. Volume 1, is limited to 50 total pages. Volume 2 and attachments included in each volume have no page limits.

Proposal submission quantity:

Volume 1, Technical Capability and Past Performance Information

- Three (3) paper copies
- One (1) CD

Volume 2, Business/Costs

- Two (2) paper copies
- One (1) CD

## **L.4.2 Proposal Organization**

Volume 1, Technical Capability shall be organized as follows:

Section 1. Understanding the Technical Requirements

Section 2. Past Performance

- Resumes
- Reference Information

### **L.4.2.1 Past Performance**

The Government is seeking a maximum of three (3) reference contacts that will demonstrate the offeror's ability to perform the requirements of the Work Statement in Section C.

The Government will focus on each project's similarity to this requirement, on contractor's ability to meet cost and schedule requirements while maintaining product/service quality, and on the contractor's success in resolving project problems.

Past experience shall be evaluated for projects completed in the three years from the date of this solicitation or currently in process, which are of similar size, scope, complexity, contract type, or, in any way, are relevant to the effort required by this solicitation. Contracts listed may include those entered into by the Federal Government, agencies of State and local governments and commercial customers. Contracts with the parent or an affiliate of the offeror may not be used.

If the offeror has no relevant corporate or organizational past performance, the offeror may substitute past performance of a predecessor company or of the offeror's proposed key personnel who have relevant experience. An offeror without a record of relevant past performance or for whom information on past performance is not available, will receive a neutral rating on past performance.

The Offeror shall provide a list of any contracts terminated for convenience or terminated for default within the last three years from the date of this solicitation. Also list any contracts for which the customer did not exercise an option to continue the contract within the last three years.

Offerors will provide, as a minimum, the following past performance information:

1. Name of agency or commercial company
2. Current address of reference
3. Current telephone number and e-mail address of the Reference/Contracting Officer and the Contracting Officer's Technical Representative (COTR)
4. Value of contract
5. Type of contract (fixed price, labor hours, cost reimbursement, (etc.))
6. A brief description of the contract work, not to exceed 3 typed pages in length for all references presented. Font size must not be smaller than 12 point.

#### **L.4.3 Volume 2, Business/Costs**

This volume shall include representations and certifications per Section K and cost/price information.

Offerors shall propose fully burdened billing rates (including direct labor, O/H, G&A, and profit) that shall be applicable to performance during each twelve month performance period of the five year contract period. Other Direct Costs (ODC) (for travel, translations, telephone etc. as authorized by the MCC COTR) shall not be addressed with your proposal submittal because ODC shall be paid at cost. Volume 2 is limited to 20 pages.

#### **L.5 Oral Presentations**

The Government may invite Offerors to make oral presentations in support of their proposal and may request to interview the Offeror's proposed team members. The Offeror's team making the presentation and responding to questions must include the key personnel who will work on the contract.

## **L.6 Negotiations**

The Government reserves the right to award without negotiations. Therefore, offerors are encouraged to submit proposals on the most favorable basis, as to price and other factors.

Offerors are cautioned that failure to provide all the required information may make the offer non-responsive and may result in elimination of the Offeror from further consideration for award.

## **L.7 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data Alternate IV (Oct 1997)**

- (a) Submission of cost or pricing data is not required.

## **L.8 Proposal Submission**

Responses shall be submitted no later than 2:00 PM, EDT, August 28, 2008. Your response should be addressed to:

Millennium Challenge Corporation  
Attn: Katrina D. Jones  
RFP: MCC-08-0115-RFP Legal Support Services -Moldova  
875 Fifteenth Street NW  
Washington, DC 20005

Please submit all questions regarding this solicitation no later than 2:00 PM, EDT, August 12, 2008, via email to [joneskd@mcc.gov](mailto:joneskd@mcc.gov) with “Question for MCC-08-0115-RFP”, on the subject line.

## **SECTION M EVALUATION FACTORS**

### **M.1 Basis for Award**

**ALL OFFEERS MUST BE MEMBERS OF THE BAR OF MOLDOVA AND LICENSED BY THE MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA IN ORDER TO BE CONSIDERED FOR AWARD OFFERORS MUST ALSO HAVE AN OFFICE(S) IN MOLDOVA AND OR THE EASTERN EUROPEAN REGION. Offers received that do not meet aforementioned criteria will not be considered.** The Government will make one award to the responsible Offeror whose responsive proposal represents the best value to the Government, price and other factors considered, in accordance with the evaluation criteria below. The best value tradeoff process described in FAR 15.101-1 permits tradeoffs among price and non-price factors and allows the Government to accept other than the lowest priced proposal or the highest technically rated proposal. The non-price factors, when combined, are significantly more important than price.

Evaluation factors:

1. Professional and technical capability to provide the services described above in a timely responsive and cost-efficient manner, including the strength of the proposed team (partners and associates);
2. Past Performance (including demonstrated project finance and/or private equity work for international entities); and
3. Price/Hourly Rate

To be responsive the Offeror must address all the requirements of the solicitation and must include all information specifically required in all sections of the solicitation. The Offeror must state how it will meet the requirements; repeating back the words of the RFP is not acceptable.

The following evaluation factors are listed in descending order of importance:

### **M.2 EVALUATION FACTOR 1: Technical Capability**

#### **M.2.1 Understanding the Technical Requirements**

The Government will evaluate the Offeror's understanding of the MCC's needs and technical requirements. The Offeror shall demonstrate:

Describe your firm's relevant experience, including with respect to the following matters:

- a. Representing foreign investors in Moldova, especially in transactions/cases that involve GoM and/or Transnistria;
- b. Advising entities in negotiating, executing and implementing agreements with governmental entities located in foreign countries;
- c. Representing parties in the formation, organization and administration of legal entities in Moldova, especially those that perform a governmental or charitable function;
- d. Advising companies in hiring and firing employees / contractors in Moldova, including governmental employees;
- e. Representing investors in project finance, grants, and/or private equity transactions, particularly in the agricultural, transportation, energy and/or health sectors; and
- f. Advising international agencies or organizations.

2. List the name of the individual lawyer who would lead your firm's representation and details of the other partners and associates who would work on this transaction, including their level of seniority, prior experience and brief biographies.

### **M.2.2 TECHNICAL ADJECTIVAL RATING SYSTEM**

The following rating system will be used to rate 1.1 Understanding the Technical Requirement.

**OUTSTANDING.** The proposal exceeds the fullest expectations of the Government. The offeror has convincingly demonstrated that the evaluation requirements have been analyzed, evaluated, and its proposal should result in outstanding, effective, efficient, and economical performance under the order/contract. An assigned rating of "outstanding" indicates that, in terms of the specific factor (or subfactor), the proposal demonstrates an "outstanding" understanding of the factor, contains essentially no weaknesses, and exceeds the fullest expectations of the Government.

**EXCELLENT.** The proposal demonstrates a level of effort that fully meets the statement of work (SOW) requirements and could produce results which should prove to be substantially beneficial to the project, containing essentially no weaknesses. Fulfilling the definition of "excellent" indicates that, in terms of the specific factor (or subfactor), the proposal demonstrates a level of effort that fully meets or exceeds the Evaluation's requirements in a way that should prove to be substantially beneficial to the project.

**SATISFACTORY.** The proposal meets the requirements. The proposal may contain weaknesses and/or significant weaknesses that are correctable but no deficiencies. An assigned rating of "satisfactory" indicates that, in terms of the specific factor (or subfactor), the proposal demonstrates a "satisfactory" understanding of the factor. If any weaknesses and/or significant weaknesses are noted, they should not seriously affect the offeror's performance

**MARGINAL.** The proposal demonstrates a shallow understanding of the requirements and approach and marginally meets the minimum evaluation standard. The proposal contains weaknesses and/or significant weaknesses and may contain deficiencies. A rating of "marginal" indicates that, in terms of the specific factor (or subfactor), the proposal marginally meets the standard for minimal but acceptable performance. The offeror may complete the assigned tasks; however, there is at least a moderate risk that the offeror will not be successful.

**UNSATISFACTORY.** The proposal fails to meet a minimum requirement or contains a major deficiency or major deficiencies. The proposal is incomplete, vague, incompatible, incomprehensible, or so incorrect as to be unsatisfactory. The evaluator feels that the deficiency or deficiencies is/are uncorrectable without a major revision of the proposal. The assignment of a rating of "unsatisfactory" indicates that in terms of the specific factor (or subfactor) the proposal fails to meet performance or capability standards. The specific factor to be evaluated contains deficiencies.

### **M.3 EVALUATION FACTOR 2: Past Performance**

The Government will evaluate the Offeror's ability to provide the services set out in the solicitation in light of the Offeror's past performance. The Offeror shall:

- a. Provide evidence (Resumes) that it has the resources, including attorneys with a demonstrated history of academic and performance excellence, to perform the legal services listed in the solicitation in Moldova and Eastern Europe.



- b. Identify at least three clients that the Government may contact to determine the quality and timeliness of services related to international agreements and/or business transaction in Moldova or Eastern Europe.

### **M.3.1 PAST PERFORMANCE EVALUATION RATING SYSTEM**

The following rating system will be used to rate factor 2 Past Performance.

**Low Risk** – Based on offeror’s past performance record, essentially no doubt exists that the Offeror will successfully perform the required effort.

**Moderate Risk** – Based on the offeror’s past performance record, some doubt exists that the Offeror will successfully perform the required effort.

**High Risk** – Based on the offeror’s past performance record, extreme doubt exists that the Offeror will successfully perform the required effort.

**Unknown Risk** – No relevant performance record is identifiable upon which to base a meaningful performance risk prediction. A search was unable to identify any relevant past performance information for the Offeror or key team members/subcontractors or their key personnel. This is neither a negative or positive assessment.

### **M.4 Best Value**

A contract will be awarded to the Offerors whose offer is the most advantageous to the Government and provides the best value based on trade-off analysis. The Government may consider award to other than the lowest priced Offeror or the highest technically rated Offeror if such an award is in the best interest of the Government.

### **M.5 Elimination of Offers for Efficiency**

As allowed in FAR 52.215-1(f)(4), Instructions to Offerors-Competitive Acquisition. OCT 1997, if the Contracting Officer (CO) receives what it considers to be a large number of offers, then the CO may eliminate highly rated proposals. The purpose of this procedure is to reduce the time and cost of source selection, for both the Government and competing offerors.